

APPEAL NO. 171211
FILED JULY 20, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 12, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) attorney and legal assistant fees in the amount of \$1,266.25 are reasonable and necessary for services rendered from February 1 through February 27, 2017, in Sequence No. 1; (2) attorney and legal assistant fees in the amount of \$525.00 are reasonable and necessary for services rendered from January 25 through January 30, 2017, in Sequence No. 2; and (3) attorney fees in the amount of \$100.00 and legal assistant fees in the amount of \$22.50 are not reasonable and necessary for services rendered from January 25 through January 30, 2017, in Sequence No. 2.

The appellant (claimant) appealed, arguing that some of the services listed in the requested fee application were not performed, and that the amount awarded was not a reasonable and necessary attorney fee. The claimant also contends that the hearing officer misstated his testimony at the CCH in her decision. Respondent 1 (attorney) responded, requesting affirmance of the hearing officer's determination. Respondent 2 (carrier) was "excused" from the CCH. The appeal file does not contain a response from the carrier to the claimant's appeal.

That portion of the hearing officer's determination that attorney fees in the amount of \$100.00 and legal assistant fees in the amount of \$22.50 are not reasonable and necessary for services rendered from January 25 through January 30, 2017, in Sequence No. 2 was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The Order for Attorney's Fees (Order) for Sequence No. 1 approves 6.25 hours of attorney fees at \$200.00 an hour for an approved total of \$1,250.00 for services rendered by the attorney from February 1 through February 27, 2017. The Order for Sequence No. 1 additionally approves .25 hours of fees for services provided by a legal assistant at \$65.00 an hour for an approved total of \$16.25.

The Division Order for Sequence No. 2 approves 2.75 hours of attorney fees at \$200.00 an hour for an approved total of \$550.00 for services rendered by an attorney from January 25 through January 30, 2017. The Order for Sequence No. 2 additionally approves .25 hours for services provided by a legal assistant at \$65.00 an hour for an

approved total of \$16.25. As previously discussed that portion of the hearing officer's determination that attorney and legal assistant fees in the amount of \$122.50 was not reasonable and necessary for services rendered during January 25 through January 30, 2017, has become final.

The hearing officer correctly noted in the discussion that the Texas Department of Insurance, Division of Workers' Compensation (Division) amended 28 TEX. ADMIN. CODE § 152.4 (Rule 152.4) to increase the maximum hourly rate of attorney fees to \$200.00 per hour, and legal assistant fees to \$65.00 per hour effective January 30, 2017. The hearing officer also correctly noted that some of the services listed in the Order for Sequence No. 2 included services that were provided prior to January 30, 2017, and therefore reduced attorney fees in the amount of \$100.00 and legal assistant fees in the amount of \$22.50.

The claimant contends on appeal that the hearing officer incorrectly stated his testimony at the CCH in her decision. At the CCH the claimant testified, among other things, that 95% of the time or more the attorney did not return his calls. However, the hearing officer noted in the Discussion that the claimant "testified that [the attorney] only returned 95% of his calls. . . ."

The hearing officer has incorrectly summarized the claimant's testimony regarding the percentage of time the attorney did not return his calls, which we view as a misstatement of material fact. While the hearing officer can accept or reject in whole or in part the evidence and testimony in this case, we must reverse the hearing officer's determinations that attorney and legal assistant fees in the amount of \$1,266.25 are reasonable and necessary for services rendered from February 1 through February 27, 2017, in Sequence No. 1, and that attorney and legal assistant fees in the amount of \$525.00 are reasonable and necessary for services rendered from January 25 through January 30, 2017, in Sequence No. 2, and we remand the issue of attorney and legal assistant fees in the amount of \$1,266.25 for services rendered from February 1 through February 27, 2017, in Sequence No. 1, and attorney and legal assistant fees in the amount of \$525.00 for services rendered from January 25 through January 30, 2017, in Sequence No. 2. On remand the hearing officer is to correct her misstatement of material fact regarding the claimant's testimony about the percentage of time the attorney did not return his calls. The hearing officer shall consider all of the evidence and make a determination of attorney and legal assistant fees in the amount of \$1,266.25 for services rendered from February 1 through February 27, 2017, in Sequence No. 1, and attorney and legal assistant fees in the amount of \$525.00 for services rendered from January 25 through January 30, 2017, in Sequence No. 2.

We note that the decision contains clerical errors. A review of the record reflects that the claimant appeared and was assisted at the CCH by Anthony Walker, an ombudsman. However, the decision incorrectly states that the claimant was assisted by Damone Edgerton. Additionally, Attorney's Exhibits 1 through 6 were admitted at the CCH. However, the decision incorrectly states that Attorney's Exhibits 1 through 5 were admitted. On remand the hearing officer is to correct the above-stated clerical errors.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge